

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Accelerating Wireless Broadband Deployment by Removing Barriers To Infrastructure Investment</b>	)	<b>WT Docket No. 17-79</b>

**To: The Commission**

**REPLY COMMENTS  
OF THE  
CRITICAL INFRASTRUCTURE COALITION**

The *Critical Infrastructure Coalition* (“*Coalition*”) hereby responds to comments filed with the Federal Communications Commission (“*Commission*”) in the above-captioned docket.<sup>1</sup> The record reinforces the *Coalition’s* call for the *Commission* to consider changes to its wireless structure siting rules and policies that will streamline and increase the predictability and sustainability of the construction process.<sup>2</sup>

**I. INTRODUCTION**

The *Coalition* continues to support the *Commission’s* efforts to streamline the agency’s wireless siting process. The record affirms that changes to the *Commission’s* wireless siting rules and policies are needed to increase the efficiency, predictability and sustainability of the tower construction process. The *Coalition* believes, and the record confirms, that two areas ripe for improvements are the tribal review process and the exemptions of certain structures from the review process.

---

<sup>1</sup> Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330 (2017) (“*Wireless NPRM*”).

<sup>2</sup> Comments of the Critical Infrastructure Coalition, WT Docket No. 17-79, at 1 (filed June 15, 2017) (*Coalition Comments*).

The record establishes that fees assessed during the tribal review process have reached excessive levels and the trend is continuing upward. To curb this trend and promote reasonable fees, the Commission must provide guidance as to when a Tribal Nation may assess fees and must take action that caps these fees. The record also reflects a need to limit the scope of tribal areas of interest. Finally, the record indicates that the Commission must provide a clear deadline in which Tribal Nations must respond to applicants, and provide guidance to applicants that allows them to move forward when no response is received.

The record supports the *Coalition's* call for certain structures to be exempted from the NEPA/NHPA review process. The *Coalition* asked the Commission to exempt from the review process towers that do not require ASR registration. The record reinforced this, and broadened this idea, with some commenters providing support for exempting all towers 200 feet or less from the review process. The record also indicates broad support for exempting “Twilight Towers” from the NEPA/NHPA review process.

With these modest changes, the *Coalition* believes the Commission will create efficiencies in the review process, significantly speeding the deployment of broadband infrastructure.

## **II. The Record Confirms that Commission Should Provide Guidance and Make Improvements to the Tribal Review Process.**

### **A. Guidance is Needed Regarding Assessment of Fees in the TCNS Process.**

In its Comments, the *Coalition* illustrates through its members' experiences the need for guidance regarding the assessment of fees in the Tribal Review process. The record is filled with experiences similar to those of *Coalition* members. Even some Tribal entities support the Commission providing guidance with respect to the process through which Tribal Nations assess fees.

**1. The Record Confirms Commission Clarification is needed Regarding Tribal Nations in the Role of Consultant.**

The majority of comments filed, both by Tribal Nations and private entities, seek clarification from the Commission regarding the point at which a Tribal Nation steps into the role of consultant and may therefore charge a fee for its services. The National Congress of American Indians (NCAI) stated “[t]he Commission should provide guidance, consistent with its established policy of Voluntary Best Practices, to address the circumstances when tribes act in the role of consultant and contractor and therefore are entitled to seek compensation.”<sup>3</sup>

The *Coalition* agrees with comments requesting clarification, and further agrees with NCAI that Tribal Nations do not enter the role of consultant when providing an answer to the question of initial interest.<sup>4</sup> Tribal Nations should not assess fees in response to the initial contact via TCNS; however, in the *Coalition* members’ experience, many tribes will not respond to the initial inquiry until a fee is paid.<sup>5</sup>

The Advisory Council on Historic Preservation (ACHP) recommends that the Commission “consult with other federal agencies regarding the use of a bright line test for an Indian tribe acting as a consultant or a contractor.”<sup>6</sup> The *Coalition* agrees that developing guidance with a bright line test would be helpful. This guidance should make clear that preliminary reviews or initial consultation efforts do not amount to contracting or consulting services.

---

<sup>3</sup> Comments of the National Congress of American Indians, WT Docket No. 17-79, at 8 (filed June 15, 2017) (NCAI Comments).

<sup>4</sup> *See id.*, at 7 (stating “During initial contact, a Tribe determines if it has a cultural or historical interest in the proposed site. The yes or no answer regarding initial interest would not require payment from the applicant.”).

<sup>5</sup> *See Coalition* Comments, at 6.

<sup>6</sup> Comments of The Advisory Council on Historic Preservation, WT Docket No. 17-79, at 2 (filed June 15, 2017) (ACHP Comments).

## 2. The Record Confirms That Action is Needed to Cap Fees.

Some Tribal Nations stated in their Comments that only a few Tribes are charging exorbitant fees, and that the Commission should specifically work with those entities, rather than provide rules that cap fees.<sup>7</sup> The *Coalition* believes the record refutes this claim. *Coalition* members report that fees from an individual tribe for one project range from \$500 to \$1,500.<sup>8</sup> AT&T reports that, “58 Tribal Nations charge an average of \$500 or more for Tribal review; 15 Tribal Nations charge \$1,000 or more.”<sup>9</sup> These numbers indicate that a significant number of Tribal Nations charge fees. Guidance and clarity from the Commission will help define when a fee may be charged and what amount is reasonable for the consulting services of the impacted Tribal Nation(s).

The record confirms that fees are rising, and without Commission action to cap fees, the *Coalition* expects this trend to continue. The *Coalition* notes that fees have dramatically increased in only a few years.<sup>10</sup> The Association of American Railroads (AAR) provides data on the fees assessed per site for three different railroads. Comparing 2017 to 2014, fees paid by Railroad A have increased 158%, fees paid by Railroad B have increased 91.6%, and fees paid by Railroad C have increased 65.5%.<sup>11</sup> This is consistent with AT&T’s comments, which indicate that the same Tribal Nation that charged \$50 for a site review in 2010 now charges \$500 for that same review.<sup>12</sup> One Tribe even alludes to the need to generate revenue from review fees.<sup>13</sup> Commission guidance is required to curb this increasing trend. The *Coalition* continues

---

<sup>7</sup> See NCAI Comments, at 11; See also Comments of the Mohegan Tribal Government, WT Docket No. 17-79, at 2 (filed June 15, 2017) (Mohegan Comments).

<sup>8</sup> See *Coalition* Comments, at 4.

<sup>9</sup> Comments of AT&T Services, Inc., WT Docket No. 17-79, at 36 (filed June 15, 2017) (AT&T Comments).

<sup>10</sup> See *Coalition* Comments, at 4.

<sup>11</sup> Comments of Association of American Railroads, WT Docket No. 17-79, at 8 (filed June 15, 2017) (AAR Comments).

<sup>12</sup> AT&T Comments, at 36.

<sup>13</sup> See Mohegan Comments, at 2.

to support the fee cap proposed in the PTA-FLA Petition, in which no fee, even for an “exceptionally complex” review, should exceed \$200.<sup>14</sup> A reasonable fee cap will not affect Tribal Nations charging reasonable fees, and will prevent bad actors from charging exorbitant fees.

**B. The Record Confirms that Changes Should be Made to Limit the Scope of Tribal Areas of Interest.**

The *Coalition* acknowledges the concerns Tribal Nations have with placing limits on the scope of Tribal areas of interest, and respects the sovereign rights of Tribal Nations to protect locations of cultural and historical significance. However, there is a benefit to Tribes of more accurately reflecting the location of such areas. Narrowing the size of geographic areas of interest would likely decrease the overall number of TCNS requests. This would be helpful to Tribal Nations, whose resources may be limited. The *Coalition* believes the TCNS process would be more efficient and effective if Tribal areas of interest were more narrowly tailored to locations of cultural and historical significance.

**1. Tribal Nations Should Be Required to Demonstrate the Cultural or Historical Significance of an Area of Interest.**

The Utilities Technology Council (UTC) provides a few avenues by which the Commission could narrow the size of geographic areas of interest claimed by Tribal Nations. The *Coalition* agrees with UTC’s suggestion of placing “the burden of evidence on the Tribal Nations to prove that they have a legitimate claim regarding an area of interest before including

---

<sup>14</sup> See Petition for Declaratory Ruling, PTA-FLA, Inc., WT Docket No. 15-180, at 14 (filed May 3, 2016) (PTA-FLA Petition) (proposing that “reviewing fees should be no more than \$50 unless the tribe demonstrates that the review is exceptionally complex. In no event should the fee exceed \$200.”); See also *Coalition* Comments, at 7.

it in TCNS.”<sup>15</sup> Currently, a Tribal Nation may claim any area as a geographic area of interest, without any justification. In many instances, Tribal Nations have claimed entire states as areas of interest. The *Coalition* understands that the historic and cultural significance of a site is not always immediately known, but Tribal Nations should be able to sufficiently pinpoint and provide some justification for a stated connection to a specific area. Requiring Tribal Nations to provide a justification for claiming an area of interest would narrow the size of geographic areas of interest, minimize the number of Tribal Nations consulted on a proposed project to those Tribes with an actual interest in the geographic area where the project is proposed, while still adequately protecting culturally and historically significant locations.

## **2. TCNS Should Allow for Tribal Nations to Voluntarily Identify Areas of Non-Interest.**

NCAI suggests that the Commission should allow Tribal Nations to voluntarily identify areas of non-interest.<sup>16</sup> NCAI recommends the Commission make a “concerted effort... to reach out to Tribes” to identify areas of non-interest. As a result, NCAI believes some urban and suburban areas would not have to go through the Tribal review process.<sup>17</sup> The *Coalition* supports this recommendation. The *Coalition* believes the Commission should provide third parties the ability to reach agreements with tribes that certain areas can be excluded from the review process.

Similarly, the *Coalition* continues to support efforts to modify TCNS so previously identified sites of cultural significance are readily apparent to subsequent applicants.<sup>18</sup> These

---

<sup>15</sup> Comments of the Utilities Technology Council, WT Docket No. 17-79, at 7 (filed June 15, 2017) (UTC Comments).

<sup>16</sup> See NCAI Comments, at 24.

<sup>17</sup> See *id.*

<sup>18</sup> *Coalition* Comments, at 9.

modifications to TCNS, which would allow the applicant to make certain determinations before involving Tribal Nations, would increase efficiency for both applicants and Tribal Nations.

**C. The Record Confirms that the Commission Should Provide Clear Deadlines for the Tribes to Respond.**

Many Tribal entities comment that delays in the process are due to deficiencies on the part of the applicant. The *Coalition* acknowledges that this may be true in certain circumstances, but in our members' experiences, delays are often caused by a delayed response from Tribal entities. In some instances, Tribal Nations do not respond at all. The *Coalition* is aware of responses to TCNS requests being received a long as four years after the submission date. The process that results in this type of delay must be improved.

General Communications Inc. (GCI) suggests a “deemed granted” or “no objection” consideration when a Tribe does not respond to a notification within 30 days.<sup>19</sup> GCI also supports a requirement for maintaining contact information. When Tribal entities lack current contact information, applicants cannot complete their obligations under the Section 106 process. The *Coalition* supports these modifications. *Coalition* members take their obligation to make a good faith effort to consult interested Tribal Nations seriously. These improvements would provide applicants with the information needed to consult with impacted Tribal Nations and a clear timeline for when their obligation is fulfilled if a Tribal Nation fails to respond.<sup>20</sup> This will further promote infrastructure deployment while still protecting culturally and historically significant locations.

If the Commission does not adopt a clear deadline for response, the *Coalition* supports ACHP's request that the Commission offer guidance on what constitutes a “reasonable and good

---

<sup>19</sup> Comments of General Communications Inc., WT Docket No. 17-79, at 12 (filed June 15, 2017) (GCI Comments).

<sup>20</sup> *Coalition* Comments, at 13.

faith effort.”<sup>21</sup> Clearer guidelines on when this obligation is met would help applicants understand when they are able to move on with the process without a response.

### **III. THE RECORD CONFIRMS THAT CERTAIN STRUCTURES SHOULD BE EXMPT FROM THE REVIEW PROCESS**

#### **A. The Commission Should Exclude Structures That Are Lower Than 200 Feet Above Ground Level from the NEPA/NHPA Review Process.**

The *Coalition* reaffirms its position that the Commission should exclude from the Commission’s review process all structures that do not requires an Antenna Structure Registration (ASR). The American Petroleum Institute (API) also endorses this recommendation, and takes it a step further, recommending the Commission exempt all structures that are lower than 200 feet above ground level.<sup>22</sup> The *Coalition* supports this recommendation. This standard height limit would resolve discrepancies that can result in two identical structures undergoing different approval processes.

#### **B. Twilight Towers Should be Exempted From The NEPA/NHPA Review Process.**

A number of organizations submitted filings supporting the *Coalition’s* recommendation that Twilight Towers should be exempt from the review process. CTIA and the Wireless Infrastructure Association illustrate the need for this change: “Many SHPOs, THPOs, and Tribes have taken the position that they are foreclosed from conducting an after-the-fact Section 106 review for such towers under the 2004 Programmatic Agreement, effectively barring these Twilight Towers from collocation under the 2001 Collocation Agreement.”<sup>23</sup> Exempting Twilight Towers from review would effectively open a number of towers to collocation.

---

<sup>21</sup> ACHP Comments, at 3.

<sup>22</sup> *See generally* Comments of American Petroleum Institute, WT Docket No. 17-79, (filed June 15, 2017) (API Comments).

<sup>23</sup> Comments of CTIA and The Wireless Infrastructure Association, WT Docket No. 17-79, at 37 (filed June 15, 2017) (CTIA/WIA Comments).

